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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,493	01/27/2004	Chad Schneider	740883-188	6256
22204	7590	09/30/2005		
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128				
EXAMINER MCCARRY JR, ROBERT J				
ART UNIT PAPER NUMBER				
3617				

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/764,493

Applicant(s)

SCHNEIDER ET AL.

Examiner

Robert J. McCarry, Jr.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-14 and 16-21 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 15 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All. b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 7-14 and 16-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Plasser et al (US 3,857,183).

Plasser et al discloses a mounting assembly on a rail car for a measurement device comprised of a securement member 18 that is a cradle member attached to the axle of a wheel 2 of the rail car. A pivot arm 14 is connected to the securement member 18 and has a lever arm extending upward and connecting to a swing arm 20 which connects to a spring component 17 of the rail car. The swing arm is adapted to rotate the top of the pivot arm 14 so that it is maintained at a substantially fixed height above the track surface 1. Each linkage connection for the securement member 18 the pivot arm 14 and swing arm 18 contain bearing to aid in movement of the various components. The swing arm 14 has a distal end mounted to a truck frame 7. A measurement device 11 is mounted at one end of the swing arm 20.

Regarding claims 17-21 drawn to the method of mounting a measurement device. Plasser et al secures a measurement device 11 to a rail car above a track surface and moving the measurement device 11 in response to the movement of a

sprung component 17. The device is further secured by also mounting a pivot arm and swing arm to the assembly.

Allowable Subject Matter

Claims 5, 6 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 07/18/2005 have been fully considered but they are not persuasive. Applicant argues that the device does not connect with a sprung component of the vehicle. The strain gage 17 is mounted with a deformable rod 16. The Examiner has interpreted the deformable rod to be a sprung component. A sprung component is not necessarily limited to an object supported by a spring. It can be an object that changes positions only to come back to its original state. A hydraulic shock absorber would be an example. It is understood that the deformable rod in this instance would deform only to return to its original position based on the movement of the vehicle and the support linkage it is connected to. Applicant also argues that the device moves the distal end of the pivot arm while the present invention maintains the arm at a substantially fixed height. The Examiner interprets that while the pivot arm moves, it is still kept at a substantially fixed height. The Examiner has interpreted a substantially fixed height to be a small range and does not have to be stationary.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Trefouel et al (US 5,203,089) and Bloom et al (US 6,725,782) both disclose ways of mounting monitoring devices to rail cars.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. McCarry, Jr. whose telephone number is (571) 272-6683. The examiner can normally be reached on Monday through Friday 7:00am to 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joseph Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert J. McCarry, Jr.
Examiner
Art Unit 3617

RJM
September 22, 2005



S. JOSEPH MORANO
SENIOR PATENT EXAMINER
ELECTRONIC BUSINESS CENTER 3600